



## INTERIOR BOARD OF INDIAN APPEALS

Helen Dorene Goodwin v. Pacific Regional Director, Bureau of Indian Affairs

44 IBIA 25 (12/04/2006)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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SUITE 300  
ARLINGTON, VA 22203

HELEN DORENE GOODWIN,	:	Order Affirming Decision
Appellant,	:	
	:	
v.	:	
	:	Docket No. IBIA 05-27-A
PACIFIC REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee.	:	December 4, 2006

Appellant Helen Dorene Goodwin seeks review of an October 12, 2004 decision (Decision) of the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA), which vacated the Central California Agency Superintendent's (Superintendent; Agency) approval of a 50-year residential lease for Elizabeth Laiwa for a one-acre portion of Allotment No. RV-445. The Regional Director remanded the case to the Superintendent to, inter alia, seek consent to the proposed lease from the owners of 60% or more of the ownership interests, obtain a rent appraisal for the property, and issue a new determination on Laiwa's request for a lease. The Regional Director also declined to order Laiwa to vacate the premises pending an additional decision on the matter by the Superintendent. Appellant seeks review only of this latter decision, i.e., the decision not to order Laiwa's eviction. For the reasons stated below, the Board affirms this decision.

### Background

Appellant and Laiwa both own an undivided interest in Allotment No. RV-445. 1/ In 2002, Laiwa requested a residential lease for a one-acre portion of Allotment No. RV-445 from the Agency. 2/ At the time, nineteen individuals owned an interest in Allotment No. RV-445 (including two identified as deceased), and the Superintendent and Laiwa contacted the landowners to determine whether they consented to Laiwa's lease proposal.

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1/ When the Superintendent approved the residential lease, Appellant owned a 360/2592, or .13889, interest in Allotment No. RV-445, and Laiwa owned a 135/2592, or .05208, interest.

2/ Allotment No. RV-445 consists of 10.160 acres, more or less.

Appellant notified the Superintendent that she opposed Laiwa's lease proposal as did one additional landowner. See June 6, 2003 letter signed by both Appellant and Rita Tugman.

On July 24, 2003, the Superintendent approved a 50-year residential lease for Laiwa. The Superintendent's decision was based on a determination that the owners of a majority of undivided interests (approximately 54 percent) in Allotment No. RV-445 had either directly consented to the lease, or the Superintendent had consented on their behalf. 3/ The lease provided for a one dollar rental. By letter dated July 28, 2003, the Superintendent notified Laiwa of his approval of the lease. Subsequently, by letter dated December 5, 2003, the Superintendent notified the landowners of Allotment No. RV-445 that the lease for Laiwa had been approved.

Appellant appealed the Superintendent's December 5, 2003 decision to the Regional Director. Appellant asserted that she had told Laiwa that she wanted to lease the same one-acre parcel of land. Appellant noted that construction had been completed of a home for Laiwa on the one-acre parcel and questioned whether Laiwa could move into the home pending her appeal. Three other landowners filed statements with the Acting Regional Director in opposition to a lease for Laiwa. See Dec. 17, 2003 letter from Inez Sands and undated letter signed by Linda Patereau and Lorna Castro received February 2, 2004 at the Regional Office; see also letters from Lorna Castro and Linda Patereau, both dated Dec. 15, 2003) (same), letters from Gertrude Lozano and Severine Mitchell, both dated Jan. 14, 2004) (same), and Oct. 29, 2004 letter from Linda Patereau to Board (same).

On October 12, 2004, the Regional Director issued the decision that is the subject of this appeal. The Regional Director determined that, under the November 7, 2000 Amendments to Indian Land Consolidation Act, Pub. L. 106-462, 114 Stat. 1991, 2004-2005, the Superintendent could only approve the lease upon written consent of 60 percent of the total ownership interests. 4/ The Regional Director determined that the consent of

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3/ The Superintendent consented on behalf of owners whose whereabouts he believed were unknown and on behalf of the undetermined heirs of two deceased owners.

4/ Section 2218 of 25 U.S.C. authorizes the Secretary, where there are more than 10 and less than 20 landowners, to approve a lease if the owners of not less than 60 percent of the undivided interests in the property have consented in writing and if the Secretary determines that it is in the best interest of the landowners to approve the lease. See 25 U.S.C. § 2218(a)(1) & (b)(1)(C) (2001).

60 percent of the ownership interests had not been obtained in the present case 5/, and therefore vacated the Superintendent's decision to approve the lease for Laiwa. The Regional Director remanded the case to the Superintendent, and directed the Superintendent to locate and query additional landowners for consent to the lease, obtain an appraisal to determine fair market rent, determine whether there are landowners willing to waive payment of rent, and determine Laiwa's financial ability to pay rent. Decision at 5. With respect to evicting Laiwa, the Regional Director found that "Appellant has not advanced any reason that would compel us to order [Laiwa] to vacate the premises, if she is in fact, now occupying the premises, pending an additional decision on this matter by the Superintendent." Id. Finally, the Regional Director requested the Superintendent to "diligently work with the co-owners and the [Housing Authority] to seek an amicable solution." Id.

Appellant appealed the Regional Director's decision to the Board and submitted both a statement of reasons and an opening brief. 6/ Appellant agrees with the Regional Director's decision to vacate the Superintendent's approval of the lease for Laiwa, see Statement of Reasons at 1, and does not appeal this portion of the Decision. In an order dated July 27, 2005, the Board clarified that the sole issue in this appeal is whether, based on the record before him, the Regional Director committed error by not directing the Superintendent to order Laiwa to vacate the premises while the Superintendent was reconsidering the matter. In the same order, the Board authorized the Superintendent to comply with the non-appealed portion of the Regional Director's decision, including but not limited to seeking consent from the landowners and issuing a new determination on Laiwa's request for a lease. The Board also continued to encourage the parties to explore the possibility of voluntary resolution of this dispute.

On August 18, 2006, the Board requested the Regional Director to file a status report to determine whether this appeal had become moot — e.g., whether a new lease for Laiwa had been executed and approved by the Superintendent, whether BIA had initiated trespass proceedings in the absence of a lease, or whether Laiwa had vacated the premises. The Board authorized interested parties to file responses.

On October 30, 2006, the Board received a status report from the Regional Director. The Regional Director stated that the Agency had obtained an appraisal for the

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5/ The Regional Director also determined that the Superintendent had lacked authority to consent on behalf of several landowners under 25 C.F.R. § 162.601.

6/ Laiwa has not appealed from the Regional Director's decision.

purpose of determining the fair market rental of Allotment No. RV-445, and that the Agency had mailed the appraisal report to all of the landowners on October 19, 2006. The Regional Director also reported that the Agency had visited Allotment No. RV-445 and had observed Laiwa living in a home on the property. 7/ The Regional Director reported that the Superintendent had not taken any action to remove Laiwa. The Regional Director stated that it was “the Superintendent’s hope that sufficient consents can be obtained to approve leases to both [Laiwa] and [Appellant] as both are owners in RV-445, and the Agency staff will continue to work toward that goal.”

The Board received a response from Appellant on November 7, 2006 in the form of a letter addressed to the Regional Director. Appellant does not dispute the status reported by the Regional Director but raises questions concerning the appraisal. 8/ Appellant’s Nov. 2, 2006 letter to Regional Director at 1.

### Discussion

Based on the Regional Director’s status report, we conclude that this appeal is not moot. Appellant contends that the Regional Director should have ordered Laiwa’s immediate eviction and, because it appears that Laiwa is still occupying the property without a lease, the Board can grant relief if Appellant prevails on the merits. We therefore proceed to address the merits of this appeal.

In her opening brief, Appellant characterizes the Regional Director’s decision as having “allowed [Laiwa] to remain on the premises.” Opening Brief at 2. She contends that the Regional Director erred in failing to order Laiwa to vacate the premises pending further decision by the Superintendent. Appellant asserts that Laiwa’s occupancy, along with her daughter’s, are “detrimental to the monetary, historical and cultural value of the land.” Statement of Reasons at 2. Appellant argues that BIA has “failed to fulfill its trust responsibility under 25 C.F.R. 162.102, et. seq,” by allowing Laiwa to remain on the property without a lease and without paying rent. Opening Brief at 5.

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7/ The Agency also reported that Laiwa’s daughter is residing in a “substandard facility adjacent to [Laiwa’s] home,” who stated her intention to remain on the property as Laiwa’s caregiver. Appellant asserts that Laiwa has permitted “illegal activity” by permitting her daughter to move onto land adjacent to the one-acre parcel where Laiwa resides and seeks a ruling from this Board on the alleged trespass. Opening Brief at 4. We decline to do so as this issue falls outside the scope of the present appeal.

8/ Appellant also demands that Laiwa’s daughter be removed from the property. Id.

The scope of this appeal is limited to reviewing the Regional Director's October 12, 2004 decision, based on the record that was before him at that time. <sup>9/</sup> See e.g., Colby v. Acting Eastern Oklahoma Regional Director, 35 IBIA 139 (2000) (The Board's review is limited to the decision rendered by the Regional Director). The Regional Director determined that Appellant had not advanced any reason that would compel him to order Laiwa to vacate the premises, pending an additional decision on the matter by the Superintendent. Decision at 5. The Regional Director further directed the Superintendent and his staff to "diligently work" with the co-owners and the Round Valley Housing Authority to reach a solution. Id. at 5. Although the administrative record indicates owner opposition to the previously proposed lease for Laiwa, the record does not demonstrate that further negotiations would not be possible or were unlikely. In the meantime, the Regional Director declined to order the Superintendent to evict Laiwa from the property of which she is part-owner. We disagree with Appellant that the Regional Director decided that Laiwa could remain indefinitely on the property without a valid lease and Appellant has not shown that the Regional Director abused his discretion by declining to order an immediate eviction.

With limited exception, a lease is required before taking possession of Indian land. 25 C.F.R. §§ 162.104(b) and (d). However, Appellant has not cited to any authority, and we are not aware of any, for the proposition that BIA is required to take immediate eviction action against an individual in unauthorized possession of trust property in which she owns an interest. Section 162.106 of 25 C.F.R. describes what action BIA will take when an individual takes possession without a lease in certain circumstances and provides in pertinent part:

**What will BIA do if possession is taken without an approved lease or other proper authorization?**

(a) If a lease is required, and possession is taken without a lease by a party other than an Indian landowner of the tract, we will treat the unauthorized use as a trespass. Unless we have reason to believe that the party in possession is engaged in negotiations with the Indian landowners to obtain a lease, we will take action to recover possession on behalf of the

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<sup>9/</sup> We do not reach the question of whether, if issued today, BIA's decision to allow Laiwa to remain on the property would be justified.

Additionally, any issues concerning the Superintendent's appraisal of the fair market rental value of the property are not ripe for our review. See 43 C.F.R. § 4.331; Archambault v. Acting Billings Area Director, 27 IBIA 124, 125 (1995).

Indian landowners, and pursue any additional remedies available under applicable law.

25 C.F.R. § 162.106 (emphasis added); see also 25 C.F.R. § 162.104(b) (lease not required where co-owners consent to possession by another co-owner without a lease).

Appellant has not carried her burden of establishing that the Regional Director erred or abused his discretion in declining to issue an immediate eviction order against Laiwa during the remand of this matter to the Superintendent for further consideration. Appellant further argues in conclusory terms that Laiwa's occupancy is "detrimental to the monetary, historical and cultural value of the land," but she does not substantiate these conclusions by submitting any factual support.

Based on the foregoing discussion, we conclude, under the circumstances of this case, that subsection 162.106(a) did not require the Regional Director to order the immediate eviction of Laiwa, i.e., that he retained some discretion as to whether to treat Laiwa's unauthorized use as a trespass requiring immediate action to recover possession. At the time the Regional Director issued his decision, it was possible that a lease for Laiwa could still be negotiated with the other landowners. The Regional Director reasonably concluded that the Superintendent would be in the best position to decide, as an initial matter, whether a lease could be negotiated and whether to exercise immediate trespass remedies against Laiwa.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms the Regional Director's decision.

I concur:

// original signed  
Debora G. Luther  
Administrative Judge

// original signed  
Steven K. Linscheid  
Chief Administrative Judge